REMARKS

Status of the claims

Claims 1-26 were presented for examination and stand rejected. Claims 19 is amended. Claims 1-26 are pending. Reconsideration of the claims is respectfully requested.

Claim Rejections under 35 U.S.C. §112, second paragraph

Claim 19 was rejected under §112 for a lack of an antecedent basis for the term "the monitor." The inclusion of this term was a typographical error in the original claim, and thus the claim has been amended to correct this error.

Claim Rejections under 35 U.S.C. §101

Claims 1-9 and 20-26 were rejected as allegedly reciting non-statutory subject matter under §101. This rejection is traversed.

The basis of the Examiner's rejection is the use of the "technological arts" test. This test has been repudiated by the Board of Patent Appeal and Interferences in *Ex Parte Lundgren*, Appeal No. 2003-2088. The Board stated:

> Our determination is that there is currently no judicially recognized separate "technological arts" test to determine patent eligible subject matter under § 101. We decline to create one. Therefore, it is apparent that the examiner's rejection can not be sustained.

The proper test for statutory subject matter for a method claim is whether the claim produces a useful, concrete, tangible result. See, *State StreetBank & Trust Co. v. Signature Financial Group,* 149 F.3d 1368; 47 U.S.P.Q.2D (Fed. Cir. 1998), and *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 50 USPQ2d 1447 (Fed. Cir. 1999). In *State Street*, the Court held that the "net asset value" output by computer system was a useful, concrete, tangible result. Similarly, in *AT&T*, the Court held that the determination by computer algorithm of a value for a primary long-distance service (interexchange) carrier was also a useful, concrete, and tangible result.

Claims 1-9 and 20-26 also recite useful, concrete, tangible results. Claim 1 recites displaying "a change in the amount of variable compensation." Claim 20 recites displaying "the calculated variable compensation amount." In both cases, the output is useful to a customer

service agent in determining how changes in the agent's performance will change the agent's compensation, either in terms of a change in the compensation (claim 1) or the compensation amount itself (claim 20). This output is concrete because it has an understood meaning and application, and it is tangible because it has a physical implementation by its display on a computer display.

It is respectfully requested that the rejection of claims 1-9 and 20-26 be withdrawn.

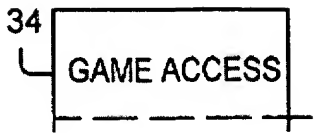
Claim Rejections under 35 U.S.C. §102

Claims 1-8 and 19-26 were rejected under §102 as being anticipated by Berkson. This rejection is traversed.

The Examiner contends that Berkson discloses "a graphical user interface adapted to allow the agent to interactively change the agent's performance level" at col. 8, lines 6-32 and Figure 1, and "displaying to the agent a change in the amount of variable compensation based on the change in the agent's performance level" at col. 7, lines 15-34, col. 10, lines 41-48 and Figure 1. This is incorrect.

Generally, Berkson discloses a system that automatically display a game interface to a customer service agent after the agent has met a specified performance level. At col. 8, lines 6-32, Berkson details the implementation of this concept, for example stating "When the established performance standards have been met, the system instantly initiates the step 64 of allowing the ACD agent to participate in a game... The game access component of the system automatically performs the game access function and provides access to a graphical game interface at the ACD agent's computing device." (col. 8, lines 6-8). The purpose in providing the game is clearly stated: "Allowing the ACD agent to immediately play a game after completing a call in which the performance metric standards have been met is intended to motivate the ACD agent to continue to meet the performance metric standards so that the game can be played again." (col. 8, lines 28-33).

Thus, Berkson's game interface is not adapted to allow the agent to interactive change the agent's performance level, as contended by the Examiner. Rather, the game is an enjoyable diversion from work, and intended to motivate the agent to "meet the performance metric standards." Figure 1 of Berkson is merely a system diagram that contains a generic "white box" labeled "Game Access".



This is not, as suggested by the Examiner, "a graphical user interface adapted to allow the agent to interactively change the agent's performance level".

At col. 7, lines 15-34 and col. 10, lines 41-48 Berkson discloses a prize pool/bank that contains "prize information" about prizes that an agent can win from playing the game, as well as "dispensation rules" for obtaining the prizes based on "prize points." The prizes are "the prizes may be awarded based upon participation in a single game, e.g., winning an overnight stay in a local hotel upon winning a game. Alternatively, the prizes may be purchased by agents, using "currency" that is accumulated as the agents receive prize points during games." (col. 7, lines 16-18). There is no disclosure here, as contended by the Examiner of "displaying to the agent a change in the amount of variable compensation based on the change in the agent's performance level". Assuming for the sake of argument that the "prizes" correspond to the "variable compensation," Berkson only discloses that such prizes are based on prize points won in a game, not on any "change in the agent's performance level."

The Examiner cites other portions of Berkson in support of the above contentions. All of these other citations to Berkson merely point to other descriptions of the same feature of Berkson, to wit, providing a game to an agent after the agent meets a performance metric in order to incent the agent (e.g., col. 3, line 65 to col. 4, line 5).

With respect to claims 1-8 and 19-26, the Examiner's contentions as to the disclosure of Berkson are incorrect and not supported by the reference. Accordingly, the rejection of claims 1-8 and 19-26 under §102 should be withdrawn.

Claim Rejections under 35 U.S.C. §103

Claims 9 and 18 were rejected under §103 as being unpatentable over Berkson alone, and claims 10-17 were rejected as being unpatentable over Berkson in view of Gozdeck. These rejections are traversed.

With respect to claims 10-17, the Examiner relies on her previous assumptions regarding the disclosure of Berkson, but admits that Berkson does not disclose a graphical element that is adapted to be directly manipulated by the agent to change the agent's current performance

measure, where the current variable compensation is automatically adjusted in response to a change in the performance measure. Accordingly, the Examiner cites Gozdeck as supposedly remedying this deficiency.

However, as the Examiner's contentions regarding the disclosure of Berkson have been shown to be incorrect, the combination of Berkson and Gozdeck is inherently deficient, since the Examiner has not shown that Gozdeck discloses the various other features supposedly disclosed by Berkson.

Secondly, the combination of Gozdeck and Berkson is improper, and cannot therefore be used to support a rejection under §103. Specifically, the Examiner cites Gozdeck for supposedly displaying a graphical element that is adapted to be directly manipulated by the agent to change the agent's current performance measure, where the current variable compensation is automatically adjusted in response to a change in the performance measure. The Examiner contends that there is motivation to combine this alleged teaching of Gozdeck with Berkson "to enable agents to better self-predict future performance and to maximize their payout by enabling agents to map up payout scenarios quickly and easily". (Official Action, pp. 14).

However, such a combination of teachings is impermissible because it fundamentally changes the principle of operation of Berkson. If such a "graphical element" were present in Berkson, there would be no need to motivate agents with a "game" in which an agent can accumulate prize points and win prizes. Instead, agents would be motivated, as specifically suggested by the Examiner, by directly seeing their potential payouts. No game would be necessary if such a "graphical element" were present. However, the entire principle of operation of Berkson is specifically to provide a game as an incentive to agents. Because the proposed combination of teachings fundamentally changes, indeed negates, the principle of operation of Berkson, the combination is impermissible, and cannot be used to support a rejection under §103. MPEP 8th Ed., §2143.01, at p.2100-138 ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)".

Accordingly, in view of the foregoing reasons, both separately, and in combination, the Examiner has not met the prima facie requirements for a rejection under §103. Accordingly, the rejection of claims 10-17 should be withdrawn.

As to claims 9 and 18, the Examiner rejected these claims based on her prior assumptions of the disclosure of Berkson in combination with "Official Notice" that "presenting data in visual format (*sic*) is well known in the area of sale and customer service" (Official Action, pp 21). This rejection, and the Official Notice specifically, is traversed.

First, the rejection is deficient for the reasons set forth with respect to claims 1 and 10, which are the respective base claims for dependent claims 9 and 18. For this reason alone the rejection should be withdrawn.

Second, the Examiner has essentially taken Official Notice of visual presentations of data. On the basis of this Official Notice, the Examiner concludes that it would have been obvious to "utilize some type of payout grid or chart to indicate to agents what variable compensation is available based on achieving certain performance milestones." (Official Action, pp. 21, emphasis added). As admitted by the Examiner, these noticed facts do nothing more than suggest some type of payout grid or chart. This indeterminate speculation is simply too vague and too generic to suggest the specific "payout grid, comprising a plurality of intersections, each intersection corresponding to a combination of a rate of handling customer inquires and a measure of resolved inquires." Further, given the almost limitless variety of different possible performance factors that could be displayed in payout grid, it takes more than the mere existence of "visual presentations of data" to suggest the specific use of "a combination of a rate of handling customer inquires and a measure of resolved inquires."

Accordingly, the Examiner has not met the prima facie requirements for a rejection under §103. Therefore, the rejection of claims 9 and 18 should be withdrawn.

In view of the foregoing, the Examiner is respectfully requested to withdraw the outstanding rejections and timely issue a notice of allowance. The Examiner is invited to contact the undersigned attorney in order to further expedite prosecution of this application.

Respectfully submitted,

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